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Committee on the Peaceful Uses of Outer Space
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Draft report

Annex I

Report of the Chair of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space

I. Introduction

1. At its 957th meeting, on 9 April 2018, the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space reconvened its Working Group on the Status and Application of the Five United Nations Treaties on Outer Space, with Bernhard Schmidt-Tedd (Germany) as Chair.

2. From 10 to [...] April 2018, the Working Group held [...] meetings. The Working Group considered the following items:

(a) UNISPACE+50 thematic priority 2, entitled "Legal regime of outer space and global space governance: current and future perspectives";

(b) Draft resolution on UNISPACE+50;

(c) The set of questions of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space;

(d) Questionnaire on the application of international law to small-satellite activities;

(e) Organizational matters and methods of work of the Committee and its subcommittees.

3. The Working Group had before it the following:

(a) Note by the Secretariat on UNISPACE+50 thematic priority 2, entitled "Legal regime of outer space and global governance: current and future perspectives", (A/AC.105/1169);

(b) Working paper submitted by Canada containing the draft resolution entitled "Fiftieth anniversary of the first United Nations Conference on the

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Exploration and Peaceful Uses of Outer Space: space as a driver of sustainable development" (A/AC.105/C.2/L.305);

(c) Conference room paper on the status of international agreements relating to activities in outer space as at 1 January 2018 (A/AC.105/C.2/2018/CRP.3);

(d) Responses to the questionnaire on the application of international law to small-satellite activities received from Austria and Germany, as well as UNISEC-Global (A/AC.105/C.2/2018/CRP.10);

(e) Responses to the set of questions provided by the Chair of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space received from Czechia (A/AC.105/C.2/2018/CRP.12);

(f) Conference room paper submitted by the Chair of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space containing a proposed outline of the key points for the guidance document under cluster 3 of UNISPACE+50 thematic priority 2, entitled "Legal regime of outer space and global space governance: current and future perspectives" (A/AC.105/C.2/2018/CRP.14);

(g) Responses to the set of questions provided by the Chair of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space received from Indonesia (A/AC.105/C.2/2018/CRP.16);

(h) Responses to the questionnaire on the application of international law to small-satellite activities received from Brazil (A/AC.105/C.2/2018/CRP.17).

4. At its [...] meeting on [...] April, the Working Group adopted the present report.

5. The Working Group considered thematic priority 2 under the year 2018 of the multi-year workplan contained in A/AC.105/1122, annex I, para. 8, and agreed to the outline of the key points for the guidance document under cluster 3, as proposed by the Chair of the Working Group in A/AC.105/C.2/2018/CRP.14. The Working Group noted that the outline should serve as the basis for a first draft of the guidance document to be prepared in all official languages of the United Nations in advance of the fifty-eighth session of the Legal Subcommittee, for further consideration by and development in the Working Group.

6. The Working Group noted, in that context, that any interlinkages to the work of the Working Group on the Long-term Sustainability of Outer Space Activities of the Scientific and Technical Subcommittee would not be addressed before final agreement was reached on guidelines for the long-term sustainability of outer space activities.

7. The Working Group noted that the set of questions provided by the Chair of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space, taking into account the UNISPACE+50 process, as contained in appendix I to the present report, provided for an exchange of views on a broad range of topics related to the status and application of the treaties, and that continued discussions under thematic priority 2 would benefit from more contributions to the set of questions from States members and permanent observers of the Committee. The Working Group agreed that States members and permanent observers of the Committee should continue to be invited to contribute to the set of questions. Any replies received would be made available in conference room papers.

8 The Working Group agreed that States members of the Committee and international intergovernmental and non-governmental organizations having permanent observer status with the Committee should continue to be invited to provide comments and responses to the questionnaire on the application of international law to small-satellite activities, as contained in appendix II to the present report. Any replies received would be made available in conference room papers.

9. The Working Group took note of the proposed multi-year workplan on the governance and method of work of the Committee and its subsidiary bodies, contained

in the report of the Scientific and Technical Subcommittee on its fifty-fifth session (A/AC.105/1167, annex I, para. 17), and recommended that the proposed workplan be considered by the Committee at its sixty-first session, in June 2018.

10. In accordance with the decision made by the Committee on the Peaceful Uses of Outer Space at its sixtieth session, in 2017, on the consideration of a draft resolution on UNISPACE+50 (A/72/20, para. 324 (f)), the Working Group considered the text of the draft resolution contained in A/AC.105/C.2/L.305.

11. The Working Group made progress in the further development of a draft resolution on UNISPACE+50 and noted that a revised text of the draft resolution would be made available for the intersessional meeting that would be convened from 7 to 11 May 2018 in Vienna, as agreed by the Committee (A/72/20, para. 324 (e)) and endorsed by the General Assembly in its resolution 72/79.

12. The Working Group recommended that on the basis of the draft resolution, considerations should be made by the Committee, at its sixty-first session in June 2018, with a view to establish a working group of the Committee in order for its chair, to be elected, to be able to work intersessionally on preparations for the fifty-sixth session of the Scientific and Technical Subcommittee, in 2019.

Appendix I

Set of questions provided by the Chair of the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space, taking into account the UNISPACE+50 process

1. The legal regime of outer space and global space governance

1.1 What is the main impact on the application and implementation of the five United Nations treaties on outer space of additional principles, resolutions and guidelines governing outer space activities?

1.2 Are such non-legally binding instruments sufficiently complementing the legally binding treaties for the application and implementation of rights and obligations under the legal regime of outer space? Is there a need for additional actions to be taken?

1.3 What are the perspectives for the further development of the five United Nations treaties on outer space?

2. United Nations treaties on outer space and provisions related to the Moon and other celestial bodies

2.1 Do the provisions of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Outer Space Treaty), constitute a sufficient legal framework for the use and exploration of the Moon and other celestial bodies or are there legal gaps in the treaties (the Outer Space Treaty and the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (Moon Agreement))?

2.2 What are the benefits of being a party to the Moon Agreement?

2.3 Which principles or provisions of the Moon Agreement should be clarified or amended in order to allow for wider adherence to it by States?

3. International responsibility and liability

3.1 Could the notion of "fault", as featured in articles III and IV of the Convention on International Liability for Damage Caused by Space Objects (Liability Convention), be used for sanctioning non-compliance by a State with the resolutions related to space activities adopted by the General Assembly or its subsidiary bodies, such as Assembly resolution 47/68, on the Principles Relevant to the Use of Nuclear Power

Sources in Outer Space, and the Space Debris Mitigation Guidelines of the Committee on the Peaceful Uses of Outer Space? In other words, could non-compliance with resolutions adopted by the General Assembly or with instruments adopted by its subsidiary bodies related to space activities be considered to constitute "fault" within the meaning of articles III and IV of the Liability Convention?

3.2 Could the notion of "damage", as featured in article I of the Liability Convention, be used to cover loss resulting from a manoeuvre performed by an operational space object in order to avoid collision with a space object or space debris not complying with the Space Debris Mitigation Guidelines of the Committee?

3.3 Are there specific aspects related to the implementation of international responsibility, as provided for in article VI of the Outer Space Treaty, in connection with General Assembly resolution 41/65, on the Principles Relating to Remote Sensing of the Earth from Outer Space?

3.4 Is there a need for traffic rules in outer space as a prerequisite of a fault-based liability regime?

4. Registration of space objects

4.1 Is there a legal basis to be found in the existing international legal framework applicable to space activities and space objects, in particular the provisions of the Outer Space Treaty and the Convention on Registration of Objects Launched into Outer Space (Registration Convention), which would allow the transfer of the registration of a space object from one State to another during its operation in orbit?

4.2 How could a transfer of activities or ownership involving a space object during its operation in orbit from a company of the State of registry to a company of a foreign State be handled in compliance with the existing international legal framework applicable to space activities and space objects?

4.3 What jurisdiction and control are exercised, as provided for in article VIII of the Outer Space Treaty, over a space object registered by an international intergovernmental organization in accordance with the provisions of the Registration Convention?

4.4 Does the concept of megaconstellations raise legal and/or practical questions, and is there a need to react with an adapted form of registration?

4.5 Is there a possibility, in compliance with the existing international legal framework, based on the existing registration practices, of introducing a registration "on behalf" of a State of a launch service customer, based on its prior consent? Would this be an alternative tool to react to megaconstellations and other challenges in registration?

5. International customary law in outer space

5. Are there any provisions of the five United Nations treaties on outer space that could be considered as forming part of international customary law and, if yes, which ones? Could you explain the legal and/or factual elements on which your answer is based?

6. Proposal for other questions

6. Please suggest additional questions that could be inserted into the set of questions above to meet the objective of the UNISPACE+50 thematic priority on the legal regime of outer space and global space governance.

Appendix II

Questionnaire on the application of international law to small-satellite activities

1. Overview of small-satellite activities

1.1 Are small satellites serving the needs of your society? Has your country determined whether small satellites could serve an identified technological or development need?

1.2 Is your country involved in small-satellite activities such as designing, manufacturing, launching and operating? If so, please list projects, as appropriate. If not, are there future plans to do so?

1.3 Which kind of entity in your country is carrying out small-satellite activities?

1.4 Is there a focal point in your country responsible for coordinating small-satellite activities as part of your national space activities?

1.5 Are small-satellite activities carried out in the framework of international cooperation agreements? If so, what type of provisions specific to small-satellite activities are included in such cooperation agreements?

2. Licensing and authorization

2. Do you have a legal or regulatory framework to supervise any aspect of small-satellite activities in your country? If so, are they general acts or specific rules?

3. Responsibility and liability

3.1 Are there new challenges for responsibility and liability in view of small-satellite activities?

3.2 How are liability and insurance requirements enforced on an operator in your country, for a small satellite under your country's responsibility, in the event that "damage" occurs on the surface of Earth, to aircraft in flight or to another space object in orbit?

4. Launching State and liability

4.1 Since small satellites are not always deployed into orbit with dedicated rockets as in the case of larger satellites, there is a need for clarification in the understanding of the definition of "launch". When a launch of a small satellite requires two steps — first, launching from a site to an orbit and, second, deploying the small satellite to another orbit — in your view, would the first step be regarded as the "launch" within the meaning of the United Nations treaties on outer space?

4.2 Do you think that the current international regulatory regime is sufficient to regulate operators of small satellites or that there should be a new or different international regulatory approach to address operations of small satellites?

5. Registration

5. Does your country have a practice of registering small satellites? If so, does your country have a practice of updating the status of small satellites? Is there any legislation or regulation in your country that requires non-governmental entities to submit to the Government information for the purpose of registration, including updating of the status of small satellites they operate?

6. Space debris mitigation in the context of small-satellite activities

6. How has your country incorporated specific requirements or guidelines into its national regulatory framework to take into account space debris mitigation?